

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL DISTRICT  
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
FOR THE STATE OF MICHIGAN,

Petitioner,

Case No. 03-1127-CR  
Hon. William E. Collette

v

THE WELLNESS PLAN,  
a Michigan Health Maintenance Organization,

Respondent.

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William A. Chenoweth (P27622)  
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**PETITION FOR APPROVAL OF THE REHABILITATOR'S PLAN  
TO SELL ASSETS OF THE WELLNESS PLAN TO AMERIGROUP MICHIGAN, INC.**

Linda A. Watters, Rehabilitator of The Wellness Plan, by Michael A. Cox, Attorney General of the State of Michigan, moves for an order approving the Rehabilitator's plan to sell assets of The Wellness Plan to AMERIGROUP Michigan, Inc., a Michigan corporation, as more fully described below. In support of this Petition, the Rehabilitator relies on authority granted to her by Sections 8113 and 8114 of the Insurance Code of 1956, as amended, MCL 500.8113 and MCL 500.8114, and on the facts and rationale set forth in this Petition.

## I. STATEMENT OF FACTS

1. The Wellness Plan was placed into rehabilitation pursuant to Chapter 81 of the Insurance Code of 1956, MCL 500.8101 *et seq*, by order of this Court on July 1, 2003. The Wellness Plan is a health maintenance organization with 103,000 members. It provides health care services in several service areas, although its primary membership is located in southeast Michigan. Most of its members are recipients of health services under Medicaid.
2. Pursuant to MCL 500.8114, the Court appointed Linda A. Watters, the Commissioner of the Office of Financial and Insurance Services, as the Rehabilitator.
3. The Court has exclusive jurisdiction over creditor claims against The Wellness Plan. It is expected that the Rehabilitator's plan to sell assets of The Wellness Plan presented by this Petition will generate sufficient funds to satisfy the creditor claims against The Wellness Plan.
4. The Wellness Plan's primary business asset is a Medicaid contract with the Michigan Department of Community Health (MDCH). The current Medicaid contract expires on September 30, 2004.
5. An Invitation to Bid with respect to Medicaid contract for the period from October 1, 2004 through September 30, 2006, with up to three one-year extensions, Bid Number 07114001168, was issued by the MDCH on March 23, 2004. The new Medicaid contract will cover the above period. The deadline for submitting a bid is Friday, May 14, 2004. In order to remain economically viable, The Wellness Plan would need to submit a successful bid for a new Medicaid contract.
6. In order to receive a Medicaid contract under the Invitation to Bid, a bidder must meet all applicable statutory financial requirements set forth in the Michigan Insurance Code,

including: net worth, minimum capital and surplus, and Risk Based Capital (RBC). Invitation to Bid, Section IV-B, p 76. An entity who is purchasing a Medicaid HMO and wishes to participate in bidding must additionally submit the following:

1. An executed fully binding purchase agreement, dated on or before May 15, 2004 between the purchasing bidder and the HMO(s) being purchased; or
2. An executed fully binding funding agreement, dated on or before May 15, 2004, between a funding agency and the bidder; or
3. An Order from the Court authorizing the sale or purchase of one or more HMOs; dated on or before May 15, 2004. (Emphasis added).

Invitation to Bid, Section IV-B, p 77.

7. The Wellness Plan has reported to the Office of Financial and Insurance Services on Form FIS 320 (December 31, 2003) that it has a negative working capital reserve of \$29.4 million. Pursuant to MCL 500.3555(b) The Wellness Plan shall not have a negative working capital reserve.

8. The Wellness Plan does not meet the Risk Based Capital (RBC) requirements. Pursuant to MCL 500.3551(4), the Commissioner is required to consider RBC requirements, as developed by the National Association of Insurance Commissioners, in order to determine compliance with MCL 500.403, which requires that The Wellness Plan be "safe, reliable and entitled to public confidence." RBC requirements are described in Insurance Bureau Bulletin 98-

02. The established standard is 200% RBC, to measure minimum needed capital given the health plan's size and risk profile. The Wellness Plan is at 123% RBC, which is \$5.5 million short of 200% RBC level.

9. In order to meet the above financial requirements to receive the 2004 Medicaid contract, The Wellness Plan would need a cash infusion of at least \$29.4 million based on the

financial documents filed with the Office of Financial and Insurance Services. The Rehabilitator has been unable to locate any source willing to fund this level of infusion.

10. Because The Wellness Plan does not now and will not on May 14, 2004 meet the statutory working capital and RBC requirements, it is ineligible to bid on or receive a new Medicaid contract in 2004.

11. Without a sale of membership assets to a qualified, eligible bidder, the MDCH will reassign The Wellness Plan's Medicaid members to other HMOs effective no later than October 1, 2004. The MDCH will transfer the members without compensation to The Wellness Plan or its creditors. If this were to occur, there may not be sufficient assets upon liquidation of The Wellness Plan to pay its claims.

## **II. THE AUTHORITY OF THE REHABILITATOR TO ACT**

12. The Rehabilitator is acting pursuant to authority granted her in Section 8114 of the Insurance Code of 1956, MCL 500.8114, which provides in pertinent part:

(2) The rehabilitator may take such action as he or she considers necessary or appropriate to reform and revitalize the insurer including, but not limited to, the powers in section 8121(1)(f), (l), (m), (r), and (u). The rehabilitator has all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. The rehabilitator has full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

\* \* \*

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer is appropriate, he or she shall prepare a plan to effect those changes. Upon application of the rehabilitator for approval of the plan, and after notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. A plan approved under this section shall be, in the

court's judgment, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall implement the plan.

(Emphasis added).

13. The Rehabilitator has legal title to all of the assets of The Wellness Plan pursuant to Section 8113 of the Insurance Code of 1956, MCL 500.8113, which provides in pertinent part:

(1) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his or her successors in office as the rehabilitator, and shall direct the rehabilitator to take immediate possession of the assets of the insurer, and to administer them under the court's general supervision. The filing or recording of the order with the clerk of the circuit court or register of deeds for the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(Emphasis added).

### **III. THE REQUEST FOR BID PROCESS**

14. Faced with the eventual reassignment of its 103,000 members to other health maintenance organizations without compensation and to preserve the maximum value for the creditors, the Rehabilitator determined that it was necessary, and in the best interests of the members, creditors, providers, and the public to solicit offers from interested parties for the sale of The Wellness Plan to another entity that would be eligible to bid on the Medicaid contract.

15. A Request for Bid letter on behalf of the Rehabilitator was issued on March 9, 2003, soliciting offers from interested buyers to submit their best and final offer to the Rehabilitator for the purchase of assets of The Wellness Plan, OmniCare Health Plan, or both. A representative copy of the Request for Bid letter is attached to this Petition at Tab 1.

16. The Request for Bid letter set forth a timeline for the bid process, and enumerated criteria that the Rehabilitator would consider when making her best judgment to determine which offer or combination of offers would best meet the needs of the creditors, members, and the public as a whole. The factors that were considered by the Rehabilitator in evaluating the proposed bids included:

- a. Are the bids fair and equitable to the creditors, members and the public as a whole?
- b. Will the bids provide full payment to the creditors?
- c. How are post rehabilitation liabilities treated?
- c. What assets are being acquired?
- e. Commitment to employ current staff.
- f. How much is being paid?
- g. Operational experience and history of the bidder and its management, including regulatory history.
- h. Availability of funds to complete the transaction and any contingencies related to the availability of funds.
- i. Financial reserves and solvency of the bidder and the proposed new entity, if any.

17. On March 17, 2004, the Rehabilitator received offers from four interested parties for the purchase of the assets of The Wellness Plan.

18. The bidders were interested in purchasing The Wellness Plan's Medicaid members, provider network, license to operate a health maintenance organization in Michigan and other miscellaneous assets.

19. The Rehabilitator carefully reviewed the merits of each of the four proposed offers to determine which offer was in the best interest of The Wellness Plan, its members, the creditors, the providers, and the public, and which offer best satisfied the criteria set forth in the Request for Bid issued by the MDCH.

20. The Rehabilitator determined that the offer from AMERIGROUP Michigan, Inc., a Michigan Corporation, best satisfied the selection criteria and the interests of The Wellness Plan,

its members, the creditors, including the providers, and the public. The offer from AMERIGROUP Michigan, Inc. will:

- a. maximize the amount of return to the creditors of The Wellness Plan.
- b. provide continuity of care to the 103,000 members of The Wellness Plan.
- c. provide that the provider agreements remain in effect on the same terms and conditions for a minimum of 12 months following the closing.
- d. provide the opportunity for continued employment to some of the current Wellness employees.

21. The Rehabilitator signed a binding Letter of Intent with AMERIGROUP Michigan, Inc. on April 1, 2004 for the purchase of certain assets of The Wellness Plan, subject to the approval of this Court. A copy of the Letter of Intent is attached to this Petition at Tab 2.

#### **IV. SUMMARY OF AMERIGROUP'S OFFER TO PURCHASE ASSETS OF THE WELLNESS PLAN**

22. AMERIGROUP Corporation is a multi-state managed health care company focused exclusively on providing health care services for low-income families, the disabled, and the uninsured within the Medicaid programs. AMERIGROUP Corporation is a publicly traded stock corporation headquartered in Virginia Beach, Virginia. AMERIGROUP Corporation has demonstrated its ability to successfully provide managed health care for more than 857,000 members in six states. At the end of 2003, AMERIGROUP had cash and investments that totaled \$570 million, with available cash more than adequate to complete the transaction.

23. AMERIGROUP Michigan, Inc., a Michigan corporation and wholly owned subsidiary of AMERIGROUP Corporation, will acquire the Assets and assume the Liabilities as defined in the Letter of Intent, which include:

- a. The Wellness Plan's HMO license.

b. The Wellness Plan's rights under the existing, or be issued a new Medicaid contract with MDCH for the service areas provided in The Wellness Plan's current Medicaid contract.

c. The Wellness Plan's rights and obligations that arise on the Effective Date under its Medicaid Provider Agreements, as defined in the Letter of Intent.

d. offer employment opportunities to current staff of The Wellness Plan to the extent possible given the position openings that will be created. AMERIGROUP Michigan, Inc. will use reasonable best efforts to interview, and consider current employees that meet or exceed specific job requirements.

24. In order to successfully bid on a 2004 Medicaid contract, AMERIGROUP Michigan, Inc. must have a network adequate to provide care to The Wellness Plan's Medicaid members. Due to the deadlines imposed by MDCH, AMERIGROUP Michigan, Inc. will not have sufficient time to negotiate new contracts with all of The Wellness Plan's providers.

25. An extension of the existing Medicaid Provider Agreements is therefore necessary to ensure uninterrupted health care services for the members, and for AMERIGROUP Michigan, Inc. to have a provider network in place on October 1, 2004, the effective date of this transaction. On July 1, 2003, the Court ordered the continuation of all existing Medicaid Provider Agreements with The Wellness Plan until further order of the Court. The Rehabilitator requests that the Court order all of The Wellness Plan's rights and obligations occurring under its existing Medicaid Provider Agreements be assigned to AMERIGROUP Michigan, Inc. effective October 1, 2004 and, except to the extent a given Medicaid Provider Agreement provides for a longer term, extend the existing Medicaid Provider Agreements until September 30, 2005.

26. AMERIGROUP Michigan, Inc.'s acquisition expressly excludes:

a. all other non-Medicaid lines of business of The Wellness Plan.



- b. The Wellness Plan's clinics and real property, provided, however, that it is anticipated that a Medicaid Provider Agreement will be executed with AMERIGROUP Michigan, Inc. for all of the clinics.
- c. all cash and deposits of The Wellness Plan.
- d. any liability arising out of or relating to the business, claims, or liabilities of The Wellness Plan existing now or at any time in the future.
- e. assumption of, or responsibility for, any liabilities of The Wellness Plan that arise prior to the transfer of members on October 1, 2004.

27. AMERIGROUP Michigan, Inc. has committed to pay \$38,000,000 in cash to The Wellness Plan for these assets. The actual purchase price will be decreased by \$368.93 per member to the extent the transferred membership is less than 103,000 as of the first of the month following the effective date of October 1, 2004, i.e. November 1, 2004. The infusion of the purchase dollars into The Wellness Plan should result in its ability to pay outstanding creditor claims, and to timely pay its providers. Because the purchase price will decrease by \$368.93 for every member who does not stay with AMERIGROUP Michigan, Inc., it is essential that the network of Designated Medicaid Providers, as defined in the Letter of Intent, be maintained to minimize the departure of members. Any decrease in membership will result in less money that is available to creditors and providers.

#### **V. TIMETABLE, COURT APPROVAL, CLOSING, EFFECTIVE DATE**

28. The controlling date for this transaction is Friday, May 14, 2004, which is the last business day that MDCH will accept bids for the new Medicaid contract.

29. Because AMERIGROUP Michigan, Inc. is purchasing The Wellness Plan's license and Medicaid members, in order to bid for a new Medicaid contract, it must submit an executed fully binding purchase agreement, pursuant to the terms of the Letter of Intent, dated on or before Saturday, May 15, 2004; or an Order from the Court authorizing the sale or purchase of The Wellness Plan, dated on or before Saturday, May 15, 2004. Invitation to Bid, IV-B, p 77.

30. The Rehabilitator and AMERIGROUP Michigan, Inc. anticipate they can finalize and execute a purchase agreement by May 14, 2004. The parties will close on the transaction by September 30, 2004, and the sale will have an effective date of October 1, 2004.

31. In order to meet the established timelines, it is necessary for the Court to give its approval to the proposed sale of The Wellness Plan's assets to AMERIGROUP Michigan, Inc. before May 14, 2004.

#### **VI. ATTORNEY GENERAL SUPERVISION OF THE WELLNESS PLAN CHARITABLE TRUST**

32. The Wellness Plan is a § 501(c)(3) charitable purpose nonprofit corporation. Because The Wellness Plan is a charitable purpose corporation, it is a registered charitable trust subject to the Attorney General's supervision pursuant to the Supervision of Trustees for Charitable Purposes Act, MCL 14.251 *et seq.*

33. The proposed sale of charitable assets to AMERIGROUP Michigan, Inc. as contemplated in the proposed transaction has been reviewed by the Attorney General's Charitable Trust Section. The Charitable Trust Section has determined there are no apparent conflicts of interest between the seller and the purchaser because the Rehabilitator has pursued the sale through a competitive bidding process. The Charitable Trust Section examined whether fair market value was being received for the charitable assets and concluded that because of the

competitive bid process for the assets, and the necessity of court approval, that any valuation concerns that may otherwise be present due to lack of an appraisal would be alleviated. Lastly, the Charitable Trust Section found that The Wellness Plan had no donor restricted assets. Accordingly, the Attorney General's Charitable Trust Section has indicated it has no objection to the proposed sale of assets in this transaction.

34. Subsequent distribution of proceeds in the receivership estate from the sale of The Wellness Plan's charitable assets would be subject to review by the Attorney General's Charitable Trust Section.

### **VII. NOTICE**

35. The Rehabilitator will provide Notice to interested persons in accordance with the Court's April 8, 2004 Order.

### **RELIEF REQUESTED**

The Rehabilitator's plan to sell the assets of The Wellness Plan to AMERIGROUP Michigan, Inc. has been designed to provide the greatest relief possible to the creditors of The Wellness Plan while protecting the interest of its members and the public. The Rehabilitator's plan is fair and equitable to The Wellness Plan's creditors, members and the public. Accordingly, the Rehabilitator's proposed transaction with AMERIGROUP Michigan, Inc. should be approved.

Based on the foregoing, the Rehabilitator requests that the Court enter an order that:

1. Finds that the transaction is an arms length transaction entered into in good faith by the Rehabilitator and AMERIGROUP Michigan, Inc.
2. Finds the Rehabilitator's sale of The Wellness Plan's assets to AMERIGROUP Michigan, Inc. under the terms and conditions set forth in the Letter of Intent is fair and equitable

and in the best interests of the creditors, providers, and members of The Wellness Plan and the public as a whole.

3. Authorizes the Rehabilitator to sell The Wellness Plan's assets to AMERIGROUP Michigan, Inc. substantially on the terms and conditions set forth in the Letter of Intent.

4. Assigns The Wellness Plan's license to AMERIGROUP Michigan, Inc. effective October 1, 2004, subject to approval by the appropriate government agencies.

5. The Wellness Plan's Medicaid Provider Agreements will remain in full force and effect until the later of September 30, 2005 or the termination date in the specific Medicaid Provider Agreement, and will be assigned to AMERIGROUP Michigan, Inc. effective October 1, 2004, who will thereafter have all the rights and responsibilities of The Wellness Plan under the Medicaid Provider Agreements.

6. The Assets, as defined in the Letter of Intent, will be transferred or assigned to AMERIGROUP Michigan, Inc. free and clear of all claims, liens, encumbrances, obligations, liabilities or other interests, including, without limitation, Excluded Claims as defined in the Letter of Intent. All liabilities and obligations that accrue before October 1, 2004 shall remain with The Wellness Plan and shall be paid, discharged or otherwise resolved as part of this Court's receivership proceedings, and AMERIGROUP Michigan, Inc. shall have no liability of any kind for such liabilities and obligations. The Court will retain exclusive jurisdiction to resolve any liabilities or obligations that are asserted against AMERIGROUP Michigan, Inc. after the Closing.

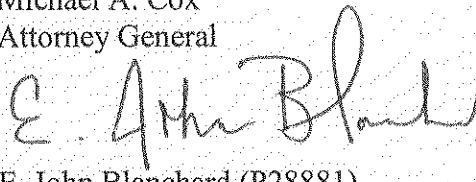
7. The Rehabilitator is authorized to execute a Definitive Agreement, as defined in the Letter of Intent, and such other agreements as may be necessary to effectuate the sale and transfer of Assets to AMERIGROUP Michigan, Inc. substantially in the form set forth in the

Letter of Intent or to otherwise perform any of the terms of the Letter of Intent or Definitive Agreement.

8. Provides such other and further direction as may be necessary to fully implement the proposed transaction.

Respectfully submitted,

Michael A. Cox  
Attorney General

A handwritten signature in dark ink, appearing to read "E. John Blanchard". The signature is written in a cursive, flowing style with a large initial "E" and a long, sweeping underline.

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